

**Iowa Department of Natural Resources  
Environmental Protection Commission**

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**ITEM**

**8**

**INFORMATION**

**TOPIC**

**Proposed Rule – amend subrule 113.2(8) of 567-Chapter 113 “Sanitary  
Landfills for Municipal Solid Waste: Groundwater Protection  
Systems for the Disposal of Non-Hazardous Wastes”**

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Attached for the Commission’s information and review is a draft Notice of Intended Action to amend subrule 113.2(8) of 567-Chapter 113 “Sanitary Landfills for Municipal Solid Waste: Groundwater Protection Systems for the Disposal of Non-Hazardous Wastes.”

This amendment is being proposed to address public comments and an objection placed upon this subrule by the Administrative Rules Review Committee pursuant to Iowa Code section 17A.4(5) on December 11, 2007. The Administrative Rules Review Committee determined that subrule 113.2(8) is unreasonable and stated “These members are concerned that subrule 113.2(8) constitutes an improper regulatory taking.” The legal effect of this objection is to shift the burden of proof to the Department in any legal challenge to the subrule. Such legal challenge has been filed.

The amendment is also intended to address question that have arisen in regard to the current closure requirements for sites that were closed pursuant to the previous rule requirements. The amendment is intended to allow municipal solid waste landfills to continue to use previously approved landfill cells which have a basal liner and leachate collection system until those cells have been filled.

The Commission will be asked to approve this Notice of Intended Action at its May meeting.

Alex Moon, Environmental Program Supervisor  
Land Quality Bureau  
Environmental Services Division

March 13, 2008



## **ENVIRONMENTAL PROTECTION COMMISSION**

### **Notice of Intended Action**

Pursuant to the authority of Iowa Code sections 455B.304, the Environmental Protection Commission hereby gives Notice of Intended Action to amend subrule 113.2(8) of Chapter 113, “Sanitary Landfills for Municipal Solid Waste: Groundwater Protection Systems for the Disposal of Non-Hazardous Wastes,” Iowa Administrative Code.

This amendment is being proposed to address public comments and an objection placed upon this subrule by the Administrative Rules Review Committee pursuant to Iowa Code section 17A.4(5) on December 11, 2007. The Administrative Rules Review Committee determined that subrule 113.2(8) is unreasonable and stated “These members are concerned that subrule 113.2(8) constitutes an improper regulatory taking.” The legal effect of this objection is to shift the burden of proof to the Department in any legal challenge to the subrule. Such legal challenge has been filed.

The amendment is also intended to address question that have arisen in regard to the current closure requirements for sites that were closed pursuant to the previous rule requirements.

The amendment is intended to allow municipal solid waste landfills to continue to use previously approved landfill cells which have a basal liner and leachate collection system until those cells have been filled.

Any interested person may make written suggestions or comments pertaining to the proposed amendments on or before 4:30 p.m. on \_\_\_\_\_, 2008. Such written materials should be directed to Alex Moon, Land Quality Bureau, Iowa Department of Natural Resources, 502

East 9th Street, Wallace State Office Building, Des Moines, IA 50319-0034; fax (515)281-8646 or alex.moon@dnr.iowa.gov. Persons wishing to convey their views orally should contact Alex Moon at (515)281-6807.

When submitting comments, the Department encourages stakeholders to utilize the following guidelines. These guidelines aid the Department in accurately understanding and creating a record of your input.

1. Include your mailing address and contact information.
2. Please state if you are submitting comments on behalf of a business, organization or as an individual.
3. Cite the specific rule(s) on which you are commenting.
4. Explain your views as clearly as possible by describing any assumptions, data, or technical information you utilized.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative language to improve the specific rule(s) and explain why.

A public hearing will be held on \_\_\_\_\_, 2008, at \_\_\_\_\_ in the Fifth Floor Conference Rooms of the Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources to advise of special needs.

These amendments are intended to implement Iowa Code section 455B.304.

The following amendment is proposed:

**ITEM 1. Amend 567 IAC 113.2(8) as follows:**

**567--113.2(8) (455B) Closure of existing MSWLF units.**

a. Existing MSWLF units that cannot make the demonstration specified in paragraph 113.6(2)“a,” pertaining to airports, in 113.6(2)“b,” pertaining to floodplains, or in 113.6(2)“f,” pertaining to unstable areas, must close in accordance with rule 113.12(455B) and conduct postclosure activities in accordance with rule 113.13(455B).

b. Except as provided in paragraph 113.2(8)“c” below, existing MSWLF units that do not have an approved leachate collection system and a composite liner or an alternative liner modeled at an approved point of compliance shall cease accepting waste by October 1, 2007.

c. Existing MSWLF units that have an approved leachate collection system and a basal liner beneath the unit that is either a composite liner or an alternative liner modeled at an approved point of compliance, but that is not continuous onto the sides of the unit, may continue to place waste after October 1, 2007 in those portions of the unit directly underlain by the basal liner. Any new unit or lateral expansion of an existing unit shall be constructed with a leachate collection system and liner that meets the requirements of subrule 113.7(5) which is continuous beneath and onto the sides of the new unit or lateral expansion of an existing unit. Such units shall be brought into compliance in accordance with subrule 113.2(9) by constructing a leachate collection system and liner on the sides of the unit that meets the requirements of subrule 113.7(5) and is continuous beneath and onto the sides of the unit.

d. Those portions of existing MSWLF units demonstrating placement of final cover in conformance with previously approved plans and specifications or regulations in effect at the time of such closure shall not be required to apply additional cover solely to achieve compliance with rule 113.12(455B).

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Date

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Richard A. Leopold, Director